IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3417 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT THROGH M.M.PATEL - Petitioner(s)
Versus
UDEYSINH VAJESINH BARIA & 1 - Respondent(s)

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Appearance :
MRS.MANISHA LAVKUMAR, ASSTT.GOVERNMENT PLEADER for Petitioner
MR UT MISHRA for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

1. Mrs. Manisha Lavkumar, learned AGP for the petitioner; Shri U.T.Mishra, learned counsel for the respondent no.1; none for the respondent no.2 though served.

2. The State Government, being aggrieved by the award dated 9.12.98, passed by the Presiding Officer, Labour Court, Godhra in Reference [LCG] No. 498/95 is before this Court with a complaint that the learned Labour Court, instead of making award in favour of the workman, should have rejected the Reference.

3. From the findings recorded by the learned Labour Court, it would indisputably appear that the present petitioner had engaged the respondent as daily rated workman on payment of wages depending upon the working days and that within 12 calendar months which is preceding the date of termination/retrenchment, the respondent workman had worked for more than 240 days. It is sought to be contended on behalf of the petitioner-State that the respondent was orally appointed, therefore, he would not become workman. I am unable to accept the said argument. Once it is proved that a person was employed and he was paid his salary, then, oral appointment or written appointment would lose its importance. It is next contended that the horticulture department would not fall within the definition of “industry' as provided under Section 2[j] of the Industrial Disputes Act, 1947. Looking to the facts of the present case and the activities of the horticulture department, in the opinion of this Court, horticulture department would come within the mischief of “industry” as defined under Section

2[j] of the Act.

4. Learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in the matter of *Reserve Bank of India v. Gopinath Sharma and another, reported in [2006] 6 SCC 221.* After going through the judgment, I must record that certain observations were made by the Apex Court on strength of the facts detailed in the said judgment. The facts of the case on hand are absolutely different. I do not find any reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any,is vacated.

[R.S. GARG, J.]

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